The court says: "I am inclined to think that under the peculiar circumstances of this case, they [the receivers] cannot be charged with negligent delay, *although the court cannot see that a definite conclusion could not have been sooner reached.* It may be said, however, that the delay. . . . . did not in any way operate to the prejudice of the Clybourn Park Company, because the receivers appear to have acted upon very equitable considerations in carrying out the contract during the year 1894, when it appeared that the Clybourn Park Company had made arrangements and entered into contracts for that season; so that the question of time within which the receivers acted ought not under the circumstances *to be deemed unreasonable.*" The last phrase is unfortunate. As used in ordinary cases of election, the criterion of "reasonableness" is whether the party electing has had time intelligently to make up his mind. Having done this, he must notify the other party immediately; he has no farther leeway. The court in the case above cited would have done the profession a service if it had said — what the decision means — that the artificial rule of strict election does not apply to receivers at all. Whether they are bound or not — independently of express election to be bound — is determined by balancing the substantial equities: Has the petitioner been diligent in asserting his rights? Have the receivers misled him to his hurt? Have they made profits out of his property during the time of delay?

A PHYSICIAN'S DUTY OF SECRECY. — Considerable discussion of this topic has been provoked by the case of *Kitson* v. *Playfair*, fully reported in the *London Times* of March 23d and the days following. This case, however, did not involve the point, for the defendant pleaded privileged communication in an action of libel and slander, and the jury found malice in fact. In a proper form of action the question then is: What right must a plaintiff rely upon to recover from a physician for the disclosure of a professional secret? The nature of the relation between physician and patient seems to be similar to the relation between principal and agent, bailor and bailee. Except for clearness, it is immaterial by what name it is known; whether, as is frequently done in agency, it is spoken of as a status, or whether some other term is applied to it. Under all circumstances, the fundamental nature of the right remains. It does not arise merely from the physician's being a member of society, and is not a duty owed to the public generally, and, therefore, it is not strictly proper to call its violation a tort; nor can it be said to be a duty assumed by contract, for though there may generally be a consideration, consideration is not essential, and when present would be of but slight importance in measuring the duty assumed. The foundation of this duty has very aptly been called an "undertaking." See article on "Gratuitous Undertakings," 5 HARVARD LAW REVIEW, 222. It is one of the recognized rights, so much discussed of late, the breach of which does not belong to either of the great classes of tort or breach of contract.

What is "undertaken" is a question of fact. It is clear that a physician "undertakes" to use that degree of skill which modern practice demands under the circumstances, and also such skill as may reasonably be expected of him from his individual record. Is there more? Does he "undertake" to keep secret whatever he discovers or is told while acting professionally? It would seem so. This is an obligation clearly recognized in the ethics of the profession, and it would seem to be a legal duty

to the patient. Judge Cooley treats a breach of this duty as one of the wrongs in confidential relations (Cooley on Torts, 2d ed., 619). It is submitted that the liability of the physician in *De May* v. *Roberts*, 46 Mich. 160, must rest on his "undertaking" to act in a professional manner. While it is true that the physician is not privileged from testifying, this does not show there is no legal duty of secrecy, for the law simply does not allow the "undertaking," if it extends so far, to interfere with the ascertaining of truth in a judicial inquiry. It is needless to comment on the oft-attacked rule that physicians and the clergy are not privileged. As long as it exists, however, it must be a good defence for the physician in any action for the disclosure of a communication. The exact limits of this "undertaking" can only be ascertained when the question actually comes up. Whether, as some physicians claim, disclosure can be made as necessity requires, the physician being the judge of the necessity, though the secret is the patient's, will then be determined. In determining this question, it would seem that aid should be sought in the testimony of physicians and others having special knowledge.

INTERPRETATION OF STATUTES — LEGISLATIVE POWERS. — Any decision declaring a statute unconstitutional upon general grounds, with a vigorous dissenting opinion, is likely to awaken general interest. The case of *Commonwealth ex rel. Koney* v. *Warwick, Mayor*, 33 Atl. Rep. 373 (Pa.), therefore, which sets forth a novel view of the constitutional restrictions on the powers of the legislature, has naturally aroused some discussion. A statute was passed in Pennsylvania directing that certain words in a previous statute, defining the term for which a certain appointee should hold office, should be construed to mean something which they evidently had not previously meant; many years later the question arises as to the length of such an appointee's term; and the court has refused to give the latter statute any effect, on the ground that it was unconstitutional, as an attempt to usurp judicial functions by directing the courts to construe an existing law in a manner contrary to its clear meaning.

This amounts to a decision that all "declaratory" or expository statutes are wholly void, except when there was a real ambiguity in the terms of the previous law. Now the only ground on which such statutes have hitherto been declared unconstitutional has been that they were retrospective in their application. In all the cases cited by the court the question was whether the legislature had power to direct the courts to apply the law as stated by the declaratory statute to transactions occurring before its enactment. And it has been often held that the legislature has no such power; or, if it might conceivably have such a power in some cases, is not to be presumed to intend to exercise it. Even the English courts are reluctant to allow a statute to interfere with rights already vested; and in this country the courts have the advantage of being usually able to find some constitutional impediment. Exceptions are allowed to this rule against giving statutes retrospective application only in certain classes of cases where no vested rights are considered to be involved, besides the cases where the previous statute was really ambiguous, in which cases the legislature's explanation of its true intent is entitled to respect.

There has never been any decision, however, until this Pennsylvania case, that a declaratory statute is not binding on the courts so far as it is